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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/532,629

04/25/2005

Keld Lauridsen

298-282

9304

28249 7590 09/20/2007

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EXAMINER

PIZIALI, ANDREW T

ART UNIT

PAPER NUMBER

1771

MAIL DATE

DELIVERY MODE

09/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/532,629	<b>Applicant(s)</b> LAURIDSEN ET AL.	
	<b>Examiner</b> Andrew T. Piziali	<b>Art Unit</b> 1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2007.  
 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 and 18-43 is/are pending in the application.  
     4a) Of the above claim(s) 5-7, 20 and 27-36 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-4, 8-16, 18, 19, 21-26 and 37-43 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 25 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/31/2007</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 8/31/2007 has been entered.

### ***Claim Objections***

2. Claims 8 and 37 are objected to because of the following informality: The claims refer to “meltdown” material.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-4, 8-16, 18, 19, 21-26 and 37-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicant claims “at least a predominant amount of the fibers or filaments is aligned.” It is not clear if said amount refers to the number of fibers in said one layer or if said amount refers to the number of fibers present in all of the layers of said multilayer composite.

The applicant claims “at least a predominant amount of the fibers or filaments is aligned.” It is not clear how more than a predominant (main) amount of fibers or filaments can be present. Therefore, it is not clear what amount of fibers or filaments is being claimed.

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Regarding claim 16, the phrase “similar flow properties (with respect to the rheological and viscosity properties) as polypropylene” is indefinite because it is not clear how close the properties must be to be considered “similar.”

Regarding claim 16, the claim is indefinite because it is not clear if the subject matter contained within parenthesis is required or optional subject matter.

Regarding claim 24, the applicant claims that the elastic meltblown layers amount to 1 to 60% by weight. It is not clear what overall weight percent the meltblown layer weight percentage is a percentage of.

Regarding claim 25, the claim recites the limitation "the needle nonwoven/spunlaced product or needle nonwoven together with elastic meltblown layers" in lines 2 to 3. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 41, the claim contains the trademark/trade name KRATON G. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4, 8-14, 16, 21-23 and 37-40 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 6,057,024 to Mleziva.

Mleziva discloses a nonwoven material having an elastic property aligned in one direction, comprising: one multilayer composite including at least one layer in which an elastic polymer composed of fibers or filaments is contained, wherein an amount of the fibers or filaments is aligned in a direction which extends transversely to the direction in which the nonwoven material is elastic (see entire document including column 2, lines 39-45 and column 7, lines 3-16).

In the event that it is shown that the applied prior art does not disclose the claimed embodiment with sufficient specificity, the invention is obvious because the prior art specifically discloses the claimed constituents.

Regarding claim 2, the multilayer composite may contain elastic meltblown fibers and spunbond fibers (column 7, lines 3-16 and column 8, lines 22-32).

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Regarding claim 3, the elastic meltblown fibers may contain bicomponent fibers (column 15, lines 18-27).

Regarding claim 4, the spunbond fibers may be inelastic (column 2, lines 13-24).

Regarding claim 8, the meltblown layer may be arranged between two spunbond layers (column 8, lines 22-32).

Regarding claims 9 and 10, the meltblown layer can be considered a liquid barrier layer or a particle retention layer, before or after stretching, because the meltblown layer would impede liquid or particles from passing.

Regarding claims 11-14, 38-40, considering that the nonwoven material structure is identical or substantially identical to the claimed nonwoven material structure, it would inherently possess the claimed characteristics.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claim 16, since the elastic meltblown layer may comprise polypropylene (column 16, lines 3-20), the meltblown fiber may have similar flow properties as polypropylene.

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Regarding claim 21, the nonwoven material may comprise spunbond polyolefin layers (column 8, lines 33-43).

Regarding claim 22, the layers inherently have a different design because one is spunbond (continuous fibers) and one is meltblown (staple fibers).

Regarding claim 23, the layers may be bonded to one another by thermal bonding (column 9, lines 15-30).

Regarding claim 37, the meltblown layer may be arranged between two spunbond layers in the order of SMS (column 8, lines 22-32).

***Claim Rejections - 35 USC § 103***

8. Claims 9, 10, 14, 15, 26 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,057,024 to Mleziva as applied to claims 1-4, 8-14, 16, 21-23 and 37-40 above, and further in view of USPN 4,879,170 to Radwanski.

Regarding claims 9 and 10, Radwanski discloses that it is known in the art to make a product a barrier to liquid (see entire document including paragraph bridging columns 17 and 18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the product impede liquid, because some applications require a liquid barrier.

Regarding claim 14, Radwanski discloses that it is known in the art to make a product a breathable (see entire document including paragraph bridging columns 17 and 18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the product breathable, because some applications require breathability.

Regarding claim 15, Mleziva does not appear to mention the nonwoven material being hydrophilic, but Radwanski discloses that it is known in the art to coat fibers with a hydrophilic finish to make the product more absorbent (paragraph bridging columns 17 and 18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to coat the fibers with a hydrophilic finish, motivated by a desire to make the product more absorbent.

Regarding claims 26 and 43, Mleziva is silent with regards to specific meltblown fiber thickness, therefore, it would have been necessary and thus obvious to look to the prior art for conventional meltblown fiber thickness. Radwanski provides this conventional teaching showing that it is known in the art to use fibers with a denier of 1.35 or less (paragraph bridging columns 11 and 12). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the meltblown fibers with a thickness of less than 1.35 denier, such as 0.001 to 0.5 denier, motivated by the expectation of successfully practicing the invention of Mleziva.

9. Claims 18, 19, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,057,024 to Mleziva as applied to claims 1-4, 8-14, 16, 21-23 and 37-40 above, and further in view of USPN 4,663,220 to Wisneski.

Mleziva discloses that the meltblown fibers may be composed of KRATON and elastic polypropylene (column 15, line 18 through column 16, line 20), but does not appear to mention the specific weight percentages. Wisneski discloses that it is known in the art to use the claimed KRATON and polypropylene weight percentages (see entire document including column 4, line 23 through column 5, line 20). It would have been obvious to one having ordinary skill in the art



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at the time the invention was made to make the meltblown fibers from any suitable KRATON/polypropylene weight percentage, such as taught by Wisneski, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics. The examiner takes Official Notice that anti-blocking agents are typically used in the art to improve flow properties.

Regarding claim 42, the meltblown fibers may be composed of a metallocene-catalyzed copolymer of polyethylene (paragraph bridging columns 15 and 16).

10. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,057,024 to Mleziva as applied to claims 1-4, 8-14, 16, 21-23 and 37-40 above, and further in view of anyone of USPN 6,663,584 to Griesbach or USPN 5,503,908 to Faass.

Mleziva is silent with regards to specific basis weights, therefore, it would have been necessary and thus obvious to look to the prior art for conventional basis weights. Griesbach and Faass each provide this conventional teaching showing that it is known in the art to use a nonwoven material with a basis weight of 10 to 500 gsm (see entire documents including column 10, lines 30-37 of Griesbach and column 12, lines 1-18 of Faass). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the nonwoven with a basis weight of 10 to 500 gsm, motivated by the expectation of successfully practicing the invention of Mleziva.

***Response to Arguments***

11. Applicant's arguments filed 8/31/2007 have been fully considered but they are not fully persuasive.

Regarding claim 16, the applicant asserts that the claim is definitive because one skilled in the art can understand determine which flow properties are “similar” to polypropylene. The examiner respectfully disagrees. The phrase “similar flow properties (with respect to the rheological and viscosity properties) as polypropylene” is indefinite because it is not clear how close the properties must be to be considered “similar.” See MPEP 2173.05(b) wherein it is disclosed that the term “similar” was held indefinite.

***Conclusion***

12. The following patent is cited to show the state of the art with respect to anti-blocking agents:

USPN 5,011,719 to Gehrke (column 8, lines 25-35)

13. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T Piziali/  
Primary Examiner, Art Unit 1771